89- 1615

NO. ___________

IN THE SUPREME COURT OF THE UNITED STATES

January Term, 1990

CHARLES R. HEFTI and
MARION HEFTI,

Petitioners,

v.

UNITED STATES OF AMERICA, and
COMMISSIONER OF INTERNAL REVENUE

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Preliminary Matter

Questions Presented

I. Whether the Appellate Court erred in affirming the judgment of the Tax Court when the Tax Court upheld an assessment of taxes against Petitioners which was clearly violative of the Internal Revenue Code, §1402(a)(5)(A), based on the facts and evidence in the record. Tax Court found both parties subject to self-employment tax even though the aforesaid section clearly indicates that either husband or wife can be charged, but not both. The Appellate Court's decision, if allowed to stand, will nullify this section of the Code.

II. Whether the Appellate Court can properly affirm the judgment of a Tax Court when the Tax Court's judgment was the result of a constitutionally unfair trial in that evidence admittedly altered by the IRS was allowed; in that evidence based on an illegal search and seizure

by Internal Revenue Service was allowed; and in that said Court refused to accept filing of court documents by Petitioners contrary to its own rules.

List of Parties

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Prayer

Come now Petitioners herein and pray this Court to make and enter its order herein, to issue its Writ of Certiorari directed to the Eighth Circuit Court of Appeals to review the judgment of said Court of Appeals in Cause No. 89-1217, styled Charles R. Hefti, et al., v. Commissioner of Internal Revenue. The judgment and order of said Court affirming a Tax Court ruling and opinion against Petitioners is wrong as a matter of law in that it ignores Internal Revenue Code §1402(a)9(5)(A); and in that Petitioners' constitutional right to a fair trial were violated. Petitioners state that such orders and the affirmance of them is improper and that the judgments therein called for correction by this Court under its powers of supervision. Petitioners pray a hearing in this Court to correct the errors of the Courts below.

Opinion Below

The decision and opinion of the Tax Court in Cause No. 21306-84, styled Charles R. Hefti v. Commissioner of Internal Revenue, dated May 10, 1988; the opinion of the Eighth Circuit Court of Appeals dated December 18, 1989 affirming the judgment of the Tax Court; and the order dated January 24, 1990, of the Eighth Circuit Court of Appeals denying a rehearing, all hereto appended in Petitioners' Appendix.

Jurisdiction to Review

The date of the denial of Petitioners' motion for rehearing in the United States Court of Appeals for the Eighth Circuit was January 24, 1990, and this petition is timely filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1651(a).

Constitutional and Statutory Provisions

United States Constitution Amendment IV
-- Searches and Seizures

The right of the people to be secure in their persons, houses, papers, and

effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution Amendment V -- Crimes; Double Jeopardy; Self-Incrimination; Due Process; Just Compensation for Property

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service and time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution Amendment XIV -- Citizenship Rights Not to be Abridged by States

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, or citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law; nor to deny any person within its

jurisdiction the equal protection of the laws.

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26 U.S.C. 1402, Definitions

(a)

(5) If --

(A) Any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

Revised Statutes of the State of Missouri, §452.330 -- Disposition of Property, Factors to be Considered

2. For purposes of §452.330 to 452.415 only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired by gift, bequest, devise, or descent;

(2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of legal separation;

(4) Property exclusded by valid written agreement of the parties; and

(5) The increase in the value of the propery acquired prior to the marriage or pursuant to subdivisions (1) to (4) of this subsection, unless marital assets including labor have contributed to such increases and then only to the extent of such contribution.

3. All property acquired by either spouse subsequent to the marriage and prior to the decree of legal separation or dissolution of marriage is presumed to be marital property regardless of whether the title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by showing that the property was acquired by a method listed in subsection 2 of this section.

Statement of the Case

Petitioners operated an audio visual business known as "Creative Sound" from their residence in the St. Louis, Missouri, area during the tax years in question (1980, 1981, 1982). Petitioners' business was to create, edit, and duplicate audio and visual materials for commercial, education, and industrial users. The husband had more than 20 years

of experience in announcing, engineering, editing, and designing audio visual materials. Prior to starting his own business in 1964, out of his residence, Mr. Hefti had been a broadcast announcer for CBS. Mrs. Hefti, a homemaker, assisted in some technical aspects of the business but was primarily responsible for bookkeeping. A promotional video tape entitled "The Creative Sound Story" was admitted into evidence as Exhibit 34 and would be available to this Court for viewing for a better understanding of the business.

Petitioners filed their 1979 tax return claiming a 75% usage of the home for purposes of business and as a business deduction. This was a large home of some 9,142 square feet and the 75% was allowed on the overall dimensions of the home. Petitioners filed their returns for 1980, 1981, and 1982 claiming a comparable usage and paid their taxes thereon.

On March 30, 1984, the Commissioner of Revenue sent as assessment and determination of tax deficiencies as follows:

Tax Year	Deficiency	§6653(a)(1)
1980	$29,077.15	$1,453.86
1981	$26,510.83	$1,325.54
1982	$22,686.95	$1,134.34

Petitioners filed a timely petition with the Tax Court on June 27, 1984. The Tax Court issued its memorandum findings of fact and opinion on January 20, 1988, two years after the trial. The Tax Court entered a finding of deficiencies of $21,705.39, $21,412.63, and $19,178.52 for the 1980, 1981, and 1982 tax years, respectively. Taxpayers filed a timely notice of appeal to the United States Court of Appeals for the Seventh Circuit on October 5, 1988, since they had become at that time residents of the State of Illinois. On Government motion, the matter was transferred to the Eighth Circuit Court of Appeals, which rendered its decision on December 18, 1989,

affirming the Tax Court's judgment <u>without opinion</u> under Eighth Circuit Court Rule 14. Motion for rehearing by the Court en banc was denied on January 24, 1990.

The Tax Court listed seven issues and made findings thereon (Appendix <u>pg 6</u>). On appeal Petitioners questioned all seven items since all of the IRS contentions were extreme, denying virtually all claimed exemptions. In this petition, Item No. 7, whether either or both partners are liable for self-employment tax, and Item No. 2, whether deductions were business usage of residence, and Item No, 3, whether Petitioners have met the requirements of 26 U.S.C. §274 or brought to this Court's attention, as being clearly erroneous in that No. 7 was decided contrary to the law, and Nos. 2 and 3 were decided in violation of Petitioners' right to a fair trial, and that Respondent's evidence was obtained in part by illegal

search, and evidence (records of taxpayer were admittedly altered and tampered with by the IRS). The Tax Court did nothing to exclude this evidence but utilized this tainted and incompetent evidence to make its determination.

The factual information relating to these issues is as follows:

Self-Employment Tax

The Tax Court itself made the findings that Petitioners are husband and wife residing in St. Louis, Missouri. Petitioners operated an audio visual business known as "Creative Sound" as sole proprietors at their family residence located at No. 4 Rolling Rock, St. Louis, Missouri. Petitioners' business is to create, edit, and duplicate audio visual material for clients. The business serves the needs of commercial, educational, and industrial users. Mr. Hefti has more than 20 years experience in announcing, engineering, editing, and designing audio

and visual materials. He has worked on radio and television and has been involved in commercials, educational materials, and industrial productions. Mrs. Hefti, a homemaker, assists in some technical aspects of the business and is primarily responsible for bookkeeping. Petitioners are industrious, work long hours, and have established a successful enterprise operating out of their home (Appendix 8).

In determining the question of self-employment tax for all three years, the agent for the IRS in violation of 26 U.S.C. 1402(a)(5)(A), simply divided the income from Creative Sound between the two parties and determined that both Petitioners were liable for self-employment tax. In its findings on this matter, the Court indicated that although Mr. Hefti possesses most of the technical expertise, Mrs. Hefti is responsible for the financial and record keeping aspects of the business (Appendx 8). Based on this, the Court then determined that

both Petitioners are liable for the tax on self-employment income in an amount to be determined in connection with the parties Rule 155 computations (Appendix 67).

There was no finding by the Court that the business was a partnership or that the wife had exclusive control. The Court did not attribute the gross income to the husband as called for by U.S.C. 1402(a)(5)(A) and did not find that the wife exercised substantially all of the management and control of the trade or business in which case the assessment could have been against the wife, but not against both.

Residence

Again, we go to the Court's findings to show the facts relating to the residence in question. The Court stated that, "Petitioners operated their business enterprise exclusively out of their residence. Petitioners' residence is

comprised of two attached buildings. The original or main building was a residence comprised of a basement and three stories with a two-car garage on the first level under which there was no basement area. A second two-story building or addition which is attached to the main building by a breezeway was added during the period 1980 through 1981. The addition was designed as a four-car garage on the first level and subdivided rooms on the second level." The parties are in disagreement about the exact square footage of the combined building. Petitioners submitted a blueprint which they calculated to reflect 9,142 square feet, and Respondent contends that this survey conducted by Internal Revenue Service engineer totaled 8,900 square feet. IRS withdrew their survey from Stipulation and the Court used Petitioners' professional, engineer certified blueprint throughout the trial. The 242 square foot difference between the parties is attributable to areas on the third floor of the main building which are somewhat inaccessible due to the slope of the

roofline that causes a relatively abrupt reduction in the height of the ceiling. Although we agree with Petitioners that this space is available for some purposes, we also, to some extent, agree with Respondent that the use is limited because of the declining roofline. Because the areas in dispute would not be usable on an equal basis with other areas of the structure, we find for purposes of this cause, that the actual usable square footage of the residence is 9,021 square feet (Appendix 23).

The Court notes in a footnote that prior to trial, the Respondent moved for and was granted an order requiring Petitioners to permit Respondent access to their residence for purposes of inspection and measurement.

The Court's order read as follows:

"7. Respondent's motion for order compelling the Petitioners to permit entry, inspection, measuring, and

photographing property and objects is granted in that Petitioners shall, within 30 days of the date of service of this order, allow Respondent entry into Petitioner's residence at No. 4 Rolling Rock Lane, Ladue, Missouri, for the purposes of inspecting, measuring, and photographing property and objects. Said inspection, measuring, and photographing shall be limited to areas and objects subject to the operation of the business conducted in said premises. Rule 72(b), Tax Court Rules of Practice and Procedure" (Appendix 88). (emphasis ours)

The Court's order then very specifically spelled out that the IRS agents could inspect the house and examine it in relation to the business areas used. It specifically prohibits or limits these agents from entering the personal living areas of the Petitioners.

The Petitioners in Tax Court brought in specific evidence to show that while

exercising the Court order, the IRS agents proceeded to literally search and photograph the entire house, deliberately entering into obvious private areas of the residence. Petitioner made several objections as noted by their witnesses. The three IRS attorneys and an engineer measured, inspected, and photographed, over the objections of the Heftis, the master bedroom, linen closet and master closet, the daughter's bedroom, the son's bedroom, the bathroom, kitchen, and garage. The Petitioners videotaped this excessive intrusion of their personal living area and the same was put into record in the Tax Court as Exhibit No. 54 which was a videotape of the entire search as conducted by the IRS agents.

It is the Petitioners' contention that the Court should have excluded the evidence obtained in this illegal search but failed to do so and, in fact, ignored the objection of the Petitioners. The

very basis of the factual findings was shown to be tainted, included posed photos, and they should not have been allowed. IRS attorneys moved furniture and a vacuum cleaner into a recording room, and photographed it in such a way as to make it appear as a utility room.

Business Deductions

At the time of the Petitioners' audit, they supplied Respondent's agent with the bills, invoices, and charge slips for entertainment of clients, which were taken from the "monthly envelopes" maintained by Mrs. Hefti. The IRS agent took these records and reviewed the documents and prepared a summary schedule of the items, all of which were proposed for disallowance. The Petitioners prepared their own ledger or summary schedule of the entertainment supporting documents. In a footnote, the Court indicates that the Petitioners had an erroneous understanding of their written

comments and that that had been the cause for many inflammatory and baseless accusations by Petitioners against Respondent's counsel and their own counsel (Appendix 82).

Thus, the Court deals with the fact that Mrs. Hefti first discovered while in trial and while on the witness stand, that her records that had been submitted by her to the IRS had been altered and portions of the same deleted to the point that she was unable to testify from them so as to explain the business reasons for incurring the expenses involved (Trial Tr. 409, et seq.). Petitioners' attorney on the record at trial stated that he did not remember agreeing to cutting off items such as daily logs of business trips for stipulation. In fact, the stipulation prepared by the IRS reads that the stipulation contains "true and correct photocopies of petitioners' ledgers." IRS made no mention of excising and/or

third-party addition to petitioners' ledgers (Appendix 99).

The Court failed to disallow or to remove the admittedly tampered evidence resulting in a completely unfair trial.

Filings in Tax Court

During the course of the pendency of the tax case, the Petitioners' attorney refused to file a timely response. The Petitioners discharged him and proceeded pro se. In the course of doing this, they attempted to file documents. The Tax Court filed some of these documents and failed to file others without notifying Petitioners, all in violation of U. S. Tax Court Rule 24(g). Petitioners will elaborate on the factual basis in the argument portion.

Existence of Jurisdiction Below

The Petitioners, residents of St. Louis, Missouri, after receiving a form 1099 declaring a deficiency in their taxes, filed suit in the United States

Tax Court under 26 U.S.C. 6213 for a redetermination of deficiency. This petition was timely in the Tax Court on June 27, 1984. The matter was heard by the United States Tax Court in February, 1986, and two years later on January 20, 1988, the Tax Court (Judge Gerber) issued its memorandum, findings of fact, and opinion entering its decision determining deficiencies for the various years of $21,705.39, $21,412.63, and $19,178.52 for the years 1980, 1981, and 1982, respectively. After taxpayers motion to vacate the decision and for a new trial was denied on July 5, 1988, the taxpayers filed a timely notice of appeal to the United States Court of Appeals for the Seventh Circuit on October 5, 1988. A motion was thereafter filed by the Government claiming venue in the Eighth Circuit, and that motion was sustained on January 26, 1989, transferring the case to the Eighth Circuit Court of Appeals.

The Court of Appeals' jurisdiction rests on 26 U.S.C. 7482(a) of the Internal Revenue Code of 1986. As noted before, after the decision and motion for rehearing was denied, jurisdiction to this Court is claimed under 28 U.S.C. 1651(a).

Reasons For Granting the Writ

I. Whether the Appellate Court erred in affirming the judgment of the Tax Court when the Tax Court upheld an assessment of taxes violative of the Internal Revenue Code, §1402(a)(5)(A), based on the facts and evidence in the record. Tax Court found both parties subject to self-employment tax even though the aforesaid section clearly indicates that either husband or wife can be charged, but not both. The Appellate Court's decision, if allowed to stand, will nullify this section of the Code.

The Petitioners had alleged in their Tax Court petition that the IRS had

charged both husband and wife with "self-employment taxes" and that this double charge was erroneous under 26 U.S.C. 1402(a)(5)(A). The Tax Court listed this charge as an issue to be decided (Appendix 6). In its findings of factual general background, the Court notes that Petitioners Charles R. Hefti and Marion Hefti are husband and wife, and resided in St. Louis, Missouri, at the time they filed their petition in this proceeding. Petitioners operated an audio visual business known as "Creative Sound" as sole proprietors, at their family residence, located at No. 4 Rolling Rock Lane, St. Louis, Missouri. Petitioners' business is to create, edit, and dublicate audio and visual material for clients. The business serves the needs of commercial, educational, and industrial users. Mr. Hefti has more than 20 years experience in announcing, engineering, editing and designing audio and video materials. He

has worked on radio and television and has been involved in commercials, educational materials, and industrial productions. Mrs. Hefti assists in some technical aspects of the business and is primarily responsible for recordkeeping. Petitioners are industrious, work long hours, and have established a successful enterprise operating out of their home (Appendix 8).

The Court clearly then did not find this to be a partnership, nor did it find that the wife exercised substantially all of the management and control of the trade or business.

What it did find was that this was a sole proprietorship operated out of the home, that Mr. Hefti had started, and in which he had 20 years experience and possessed most of the technical expertise. Mrs. Hefti, a housewife, assisted in some technical aspects and was primarily responsible for bookkeeping.

The applicable statute in question utilized to determine the definition as to what net earnings from self-employment should be considered is found under 26 U.S.C. 1402(a)(5)(A). The pertinent portion of the statute is as follows:

"(5) If

(A) Any of the income derived from a trade or business (other than a trade or business carried on by the partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and"

A simple reading of this section clearly indicates that all gross income attributable to the business shall be treated as the gross income of the husband. It does not say that the income shall be split between the husband and wife. It specifically excludes the wife, unless -- she exercises substantially all of the control of the business. In that case, all of the income is charged to her and the husband is excluded. In no event can both be charged.

This section declares that income in a situation such as this (it was not a partnership) to be community income. The Heftis repeatedly claimed that under Missouri law and statute R.S.Mo. 452.330 and under Missouri case law (Hagar v. Hagar, 722 S.W.2d 358 (Mo.App. 1987)), each spouse had such a common ownership in their marital income and that it was community property. This was never countered or contested by the IRS.

Consequently, it was and is their position that by definition and the clear facts of this case, the gross income of the business must be treated as the gross income of the husband, and the husband alone.

Going clearly contrary to the law, and without making any finding of facts that might have brought Mrs. Hefti within the purview of any of the tax provisions, the Court simply found that both parties were liable for self-employment taxes for the three years in question (Appendix pg67). This was an erroneous decision as a matter of law, a departure from the accepted course of judicial proceedings.

The Appellate Court in upholding the Tax Court's decision and in failing to correct this erroneous matter of law, sanctioned the decision far departed from the accepted and usual course of judicial proceedings. The ruling makes the code section useless within the Eighth Circuit

and allows the IRS to charge whom they will with self-employment taxes. When there is a question of a clear direction under the tax law, the Tax Court cannot simply generalize or overlook the same. Shenker v. C.I.R., 804 F.2d 109 (8th Cir. 1986). The Eighth Circuit should have remanded this case to the Tax Court for rehearing in this issue as they did on a similar regulation in the Shenker case, supra.

The matter affects a great many people and is of extreme importance to all citizens and cries out for correction and remedial action by this Court.

The provision is law. It was passed as a law by the Congress of the United States. It was classified as a "definition." It was a restriction placed on the IRS in cases such as this to prevent exactly the type of taxpayer abuse that occurred herein. We state that it is imperative that this Court interpret

the law by its plain reading and meaning and to issue its ruling that the Tax and Appellate Court were wrong in their interpretation of this law. To approve or let stand such a decision would allow yet more erosion of the tax laws resulting in a diminution of the legal rights of all taxpayers.

We ask, therefore, that this Court issue its writ of certiorari to the Eighth Circuit Court of Appeals and that it order that briefs and a hearing be had in this matter so that this Court may render a final decision in this case.

II. Whether the Appellate Court can properly affirm the judgment of a Tax Court when the Tax Court's judgment was the result of a constitutionally unfair trial in that evidence admittedly altered by the IRS was allowed; in that evidence based on an illegal search by Internal Revenue Service was allowed; and in that

said Court refused to accept filing of court documents by Petitioners contrary to its own rules.

Petitioners brought to the attention of the Eighth Circuit Court of Appeals clearly erroneous actions of the Trial Court which rendered the trial a farce and violated Defendant's constitutional rights in that the Tax Court's judgment deprived Defendants of considerable property, including their home, without due process of law (United States Constitution Amendment V). The Appellate Court in its affirmance of the Tax Court approved of three flagrant violations of judicial procedure and taxpayers' rights. Three of those errors included (1) the allowance of evidence resulting from an unconstitutional search of the taxpayers' house, (2) allowance of evidence admittedly altered by the IRS, and (3) arbitrary refusal of the Tax Court to

accept certain taxpayers' pro se filings while accepting other pro se filings. Appellate Court did not deem these matters important enough to render an opinion thereon.

In the course of this tax collection procedure, the IRS had inspected the Petitioners' house on several occasions. After the matter went into Tax Court, the IRS wanted to inspect the place again, so they applied for and got a warrant. Petitioners filed an objection. The Court did not file said objection but the Clerk marked "no objection by petitioners'" on docket sheet. The specific limitation on the warrant issued was "said inspection, measuring, and photographing shall be limited to areas and objects subject to the operation of the business conducted in said premises. Rule 72(b) Tax Court Rules of Practice and Procedure."

The search then ensued was a planned

harassment in that the IRS attorneys and an IRS engineer deliberately searched and ransacked the entire house, including all private areas such as bedrooms, bathrooms, and closets. This search was witnessed by several citizens, and video taped by the Petitioners and became Exhibit 34 and was made a part of their case and of the record.

This deliberate violation of constitutional rights was ignored by the Tax Court.

The question is relevant because the "search" was supposed to enable IRS agents to determine the percentage of business use of the residence. The IRS began by measuring the entire exterior of the home. With the total exterior figure in mind, all that remained necessary for IRS to measure was the business areas. Simple calculations of subtracting the business area square footage from the entire square footage would result in a figure for the

personal square footage. The IRS had approved a 75% use in 1979. As a result of the assessment made by the IRS for 1980, 1981, 1982, this was reduced to 7%. That issue, in part, was the size of the house. The Tax Court goes into great length about the house indicating that Petitioners operate their business enterprise exclusively out of their residence. Deductions for business use of a home even as a part time or sideline business is allowed. Jones, T. C. Memo 1989-545.

The Tax Court stated that, "Petitioners' residence is comprised of two attached buildings. The original and main building was a residence comprised of a basement, three stories, with a two-car garage on the first level under which there was no basement area. A second two-story building or addition, which is attached to the main building by a breezeway, was added during the period

1980 through 1981. The addition was designed as a four-car garage on the first level and subdivided rooms on the second level. The parties are in disagreement about the exact square footage of the combined buildings. Petitioners submitted a blueprint which they calculated to reflect 9,142 square feet, and Respondent contends that its survey conducted by an Internal Revenue Service engineer totaled 8,900 square feet." The Court went on to find that the actual usable square footage of the residence was 9,021 square feet (Appendix 23).

The Court then adds as a footnote to that description that prior to trial the Respondent moved for and was granted an order requiring Petitioners to permit Respondent access to their residence for purposes of observation and measurement.

The Court completely ignores the fact that the agents violated its orders and the Tax Court rules. The Petitioners

brought in a video tape recording showing the agents crawling around the house under beds, in bedrooms, into closets, and the like, showing a clear violation of the Court's own order and rules to exclude obviously personal areas.

It is and was Petitioners' position that the Tax Court should have sanctioned the IRS and excluded such evidence because it was tainted by illegality and should have sustained the Petitioners' evidence of the percentage of the home used. Both the Tax Court and the Appellate Court ignored Defendants' argument that a fair trial would exclude such tainted evidence. This Supreme Court has noted that it "has never applied the exclusionary rule in a civil case," but it is high time that it does so and should do it in this case. INS v. Lopez-Mendoza, 468 U.S. 1032, 1040-1042 (1984); and United States v. James, 428 U.S. 433, 437 (1976). See also, Riland v. Commissioner, 79 T.C. 185

(1982).

There was a deliberate harassment and search made under documented protest by Petitioners probably made to attempt to find incriminating evidence. Petitioners did not lose their Fourth Amendment protections under the Constitution when they declared a business use of a portion of their home. The abhorrence of unconstitutional search and seizures specifically as it relates to private homes should be applied and this Court should reconsider a case such as this in light of its own decisions. See, Coolidge v. New Hampshire, 403 U.S. 443, 454-455 (1971); Stoner v. California, 376 U.S. 483 (1964); United States v. Jeffers, 342 U.S. 48 (1951); and McDonald v. United States, 335 U.S. 451 (1948).

Petitioners also complained of allowance of evidence admittedly altered by the IRS into evidence in this case and used as the basis of the adverse decision

against Petitioners. Because of editorial restrictions on Petitioners, it is nearly impossible to make a showing to this Court of the flagrancy of the actions of the IRS in altering, obliterating, and changing the original business records of Petitioners.

As is mandatory in Tax Court, a stipulation was prepared which contained original business records and at the time Petitioners were represented by counsel, that is, before they proceeded pro se. These are factual matters presented to the Court which form the basis of the decision and opinion. We have tried to reproduce a simple bank statement which originally showed a large withdrawal by Petitioners of $23,000.00. IRS altered it so as to be illegible and subsequently alleged unreported income and proceeded on a "cash expenditure" theory. The alteration must have been obvious to the Trial Judge. The revenue agent's records

were largely illegibile and reduced by one-third of their original size. The parties and the Court could not read the revenue agent's ledgers or summary sheets and relied at trial solely on the Petitioners' ledgers or summary sheets which were admittedly falsified by IRS (unbeknown to Petitioners) and which later became the basis of the adverse ruling.

In the course of the trial, Petitioners tried to establish bonafide business and entertainment expenses. On cross-examination, Mrs. Hefti was handed a copy of one of "her records" and for the first time realized the nature and extent of the alterations. She could not explain the bill for the simple reason that the bottom portion of the record explaining the business purpose of the expense had been cut off and rephotocopied (Trial Tr. 409). Mrs. Hefti was upset to the point that she broke down crying and told the Judge that these were not

the records she gave to IRS. A recess was called and both attorneys were called to chambers. The IRS attorney admitted to deletion of items in the record as well as having reduced and having made the copies of the record itself. Pertinent tax return information was removed from Petitioners' ledgers. That information explained how and why the expense was incurred.

The Trial Judge went to great lengths to explain that the taxpayers' records were erroneous and that they contained notes and comments made by the taxpayers and that, therefore, deletions or alterations of their original business records was okay (Appendix 82). What he was really doing was saying that, yes, the records were altered and apologizing for the same and giving this as a rationale or reason as to why they could be altered. This conclusion to us is astounding. There must be some limit on

the discretion of the Court in the admission of evidence and that to us would be the knowing admission of altered evidence.

The Eighth Circuit in upholding the Tax Court agrees to this kind of evidence. The Court had the power to set this aside because of the manifest injustice shown. Loftin and Woodward, Inc. v. United States, 577 F.2d 1206 (5th Cir. 1978).

The Petitioners third claim of a totally unfair trial was based on the fact that the Tax Court failed to treat the Petitioners' as "equals" under the law and seriously damaged their case by refusing to file certain documents filed by them "pro se." After their original attorney had withdrawn with the consent of the Court, the Court obviously knew that the Petitioners were acting "pro se." The Court arbitrarily chose certain pro se documents which the Court filed, but other pro se documents were returned to

Petitioners. Certain pro se documents were not filed or returned.

One returned document was their "motion to compel discovery," the Court refusing to file the same. Subsequently, when Petitioners tried to enforce discovery, they were advised that the time had run out and they were unable to seek discovery from the IRS.

The same thing happened after the IRS sought a search warrant. The Petitioners pro se prepared an "opposition to entry of house by IRS" and sent it in within the allotted time. This was an opposition to the motion that the IRS had filed to once more search the residence of the Petitioners. (There were three prior IRS inspections of Petitioners' residence for the tax years in question here.) Their opposition to entry of the house by the IRS was returned to them without explanation. The Tax Court judge then approved the IRS motion to allow them

to inspect the residence of the Petitioners, noting specifically that he did so, at least in part, because on the docket sheet the Court entered the words that there was "no reply" from the Petitioners. The Court had simply refused to file a document of a party in violation of its own rules. Earlier the Court did file certain pro se documents. Other documents, including Petitioners' motion to add excluded documents, which motion was finally allowed, were neither filed nor sent back to the complainants, all in violation of U.S.T.C. Rule 24(g). Further, the Judge, without request from either party, took a personal letter he had received from the attorney that formerly represented the Petitioners and filed it as a court document, apparently because the information was unfavorable to the Petitioners. The Tax Court consistently throughout the case simply picked and chose what it would file or

not file and what it would consider or not consider. These actions of the Tax Court resulted in findings that were clearly erroneous specifically to the finding that the Heftis had not opposed the motion for entry into their residence. They had opposed it. They filed a motion in opposition based on substantial grounds that the IRS had previously inspected their residence three times for the same tax years in question here. The Tax Court refused to accept the same and sent it back to them. There are simply limits to the discretion of the Tax Court and this case shows clear abuse of that discretion in following its own rules and procedures. Cassidy v. C.I.R., 814 F.2d 477 (7th Cir. 1987). Petitioners claim that this was not a fair trial as envisioned and generally obtained through our Constitution and case laws. Petitioners claim that this was, in effect, a taking of their property without

due process of law (Constitution Amendment V). It was simply a decision by an IRS official that these people should be forced to pay monies far in excess of any reasonable taxation because they had opposed the IRS' wrongdoings. This was stamped with a rubber stamp by the Tax Court and passed over by the Appellate Court as just another tax case. It was, in fact, a violation of the constitutional rights of the Petitioners to have a fair trial in all respects, even though this was a civil matter and even though this was a tax matter. The same fine rules of law which have been generated by the Constitution and supported by the Courts over the past 200 years should not be abrogated at this point.

We ask, therefore, in conclusion that this Court issue its order and writ directed to the Eighth Circuit Court of Appeals to bring this matter fully before this Court for briefing and for argument

herein.

SHAW, HOWLETT & KNAPPENBERGER

By________________________________

Charles M. Shaw
Attorneys for Petitioners
168 N. Meramec, Suite 150
Clayton, Missouri 63105
(314) 725-9700

Certificate of Service

Charles M. Shaw, of lawful age, being first duly sworn upon his oath, states that he mailed three conformed copies of Petition for Common Law Writ of Certiorari to the Eighth Circuit Court of Appeals, togehter with Appendix thereto, to William S. Rose, Attorney, Tax Division, Department of Justice, P. O.Box 502, Washington, D.C. 20004, on the ____ day of April, 1990, by placing same in the U. S. Mail, postage prepaid, Clayton, Missouri.

____
Charles M. Shaw

Subscribed and sworn to before me this ____ day of April, 1990.

____
Notary Public

My Commission Expires:

____

NO. ________

IN THE SUPREME COURT OF THE UNITED STATES

January Term, 1990

CHARLES R. HEFTI and
MARION HEFTI,

Petitioners,

v.

UNITED STATES OF AMERICA, and
COMMISSIONER OF INTERNAL REVENUE

Respondents.

APPENDIX

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(314) 725-9700

INDEX TO APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 89-1217

Charles R. Hefti, et al.,	)	
	)	
Appellants,	)	
	)	
vs.	)	Appeal from
	)	the United
Commissioner of Internal	)	State Tax
Revenue,	)	Court
	)	
Appellee.	)	

The suggestion for rehearing en banc filed by appellant has been considered by the court and is denied by reason of the lack of a majority of the active judges voting to rehear the case en banc.

Petition for rehearing by the panel is also denied.

January 24, 1990

Order Entered at the Direction of the Court: /s/ Robert D. St. Vrain, Clerk, U. S. Court of Appeals, Eighth Circuit

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 89-1217

Charles R. Hefti, and Marion Hefti,	)	
Appellants,	)	
vs.	)	Appeal from the United State Tax Court
Commissioner of Internal Revenue,	)	
Appellee.	)	

Submitted: November 15, 1989

Filed: December 18, 1989

Before FAGG, Circuit Judge, FLOYD R. GIBSON, and BRIGHT, Senior Circuit Judges.

PER CURIAM.

Taxpayers appeal from an adverse decision of the Tax Court relating to the gross receipts earned and the deductions claimed by their audio visual business. Having thoroughly reviewed the analysis and decision of the Tax Court and the briefs, record, and arguments of the parties, we affirm on the basis of the Tax Court's opinion. See 8th Cir. R. 14.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT

UNITED STATES TAX COURT

CHARLES R. HEFTI and MARION HEFTI, Petitioners,	
v.	Docket No. 21306-84
COMMISSIONER OF INTERNAL REVENUE, Respondent.	

DECISION

Pursuant to the opinion of the Court filed January 20, 1988, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED AND DECIDED: That there are deficiencies in income taxes and additions to tax due from the petitioners as follows:

Taxable Year	Income Tax	Deficiencies §6653(a)
1980	$21,705.39	$1,085.27
1981	21,412.63	--
1982	19,178.52	--

Additions to Tax §6653(a)(1)	§6653(a)(2)
--	--
*	*
*	*

It is further decided that there are additions to the taxes due from the petitioners for the taxable years 1981 and 1982, under the provisions of I.R.C. §6653(a)(2), equal to 50 percent of the statutory interest due on $21,412.63 and $19,178.52, respectively, to the date of assessment of tax or, if earlier, the date of payment.

(Signed) Joel Gerber, Judge.

Entered: May 10, 1988

T.C. Memo. 1988-22

UNITED STATES TAX COURT

CHARLES R. HEFTI AND MARION HEFTI, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 21306-84.

Filed January 20, 1988.

Charles R. Hefti and Marion Hefti, pro

se.[1]

James A. Kutten, for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION[2]

GERBER, Judge: Respondent, by a notice of deficiency dated March 30, 1984, determined income tax deficiencies and additions to tax in petitioners' 1980, 1981 and 1982 taxable years, as follows:

Year	Income Tax Deficiencies	Additions to the Tax §6653(a)(1)[3]	§6653(a)(2)
1980	$29,077.15	$1,453.86	n/a
1981	26,510.83	1,325.54	*
1982	22,686.95	1,134.34	**

(* Fifty percent of the interest due on $26,510.83)
(** Fifty percent of the interest due on $22,686.95)

In the notice of deficiency, respondent determined numerous adjustments to the amounts reported by petitioners, none of which have been fully agreed or resolved prior to trial.[4] We are presented with the following general categories of issues for our consideration: (1) Whether petitioners' reported income should be increased each year in issue by the amount

respondent determined based upon use of an indirect analysis (cash expenditures method); (2) whether various types of deductions connected with the use of petitioners' residence for business purposes are deductible; (3) whether petitioners have met the requirements of section 274 in substantiating their travel and entertainment expenses; (4) whether petitioners have shown that they are entitled to an amount in excess of the amounts allowed by respondent for business use of automobiles; (5) with respect to rental property: (a) whether furnishings acquired are deductible in the year of purchase or must be capitalized, and (b) whether petitioners are entitled to a full year's depreciation where property was placed in service for less than a full year; (6) whether petitioners are entitled to various expenses claimed under various classifications including cost of goods sold; (7) whether either or both

petitioners are liable for self-employment tax during the years in question; and (8) whether petitioners are liable for additions to tax under section 6653(a) for 1980 and section 6653(a)(1) and (2) for 1981 and 1982.

General Background

The parties have entered into stipulations of facts along with attached exhibits all of which are incorporated by this reference. Petitioners Charles R. Hefti and Marion Hefti are husband and wife, and resided at St. Louis, Missouri, at the time they filed their petition in this proceeding. petitioners operated an audio-visual business known as "Creative Sound," as sole proprietors, at their family residence, located at 4 Rolling Rock Lane, St. Louis, Missouri. Petitioners' business is to create, edit and duplicate audio and visual material for clients. The business serves the needs of commercial, educational and

industrial users. Mr.Hefti has more than 20-years experience in announcing, engineering, editing and designing audio and video materials. He has worked on radio and television and has been involved in commercials, educational materials and industrial productions. Mrs. Hefti assists in some technical aspects of the business and is primarily responsible for recordkeeping. Petitioners are industrious, work long hours and have established a successful enterprise operating out of their home.

Adjustments to Gross Income Based on Cash Expenditures Method

Petitioners utilized one checking account, under the name "Creative Sound," for both business and personal purposes and deposited business receipts into that checking account. The gross receipts shown on petitioners' returns were the total of the deposits into the checking account. Petitioners, during the audit

of their 1980, 1981 and 1982 taxable years, did not provide specific records reflecting the source of their reported gross receipts. Kevin McGrath, respondent's agent, utilized an indirect method involving expenditures to determine whether petitioners reported gross receipts reconciled with their expenditures. Subsequent to issuance of the notice of deficiency and the institution of this case, petitioners supplied respondent with records reflecting their invoices or billings for the years in issue. The totals of the billing records submitted were $9,544.44, $29,218.87 and $6,354.69 less than the amounts of gross receipts reflected on petitioners' 1980, 1981 and 1982 joint Federal income tax returns, respectively. Petitioners did not have any reliable or accurate records of specific receipts for the taxable years in question.

Agent McGrath interviewed Mr. Hefti

during the audit process. Based upon the interview, Agent McGrath determined that petitioners had: $1,000 or less of cash on hand as of December 31, 1979; no investments; no outstanding loans; and no nontaxable sources of income. Petitioners responded "not available" to respondent's pretrial interrogatories inquiring into the amount of cash on hand and nontaxable sources of cash. Based upon these assumptions, Agent McGrath analyzed petitioners' expenditure records and determined the amount of cash expenditures for each year, which did not include any amounts paid for by check or credit card. Agent McGrath performed a cash expenditures analysis by examining each cash expenditure, excluding expenditures paid by check, charge and cash expenditures traced to specific cash withdrawals, sources of cash and any other case available to determine whether petitioners may have had any unreported

income. Petitioners' savings account and loan receipts were analyzed and withdrawals from savings and loan proceeds, which were identified, were not included in the cash expenditure analysis.

Mr. Hefti provided Agent McGrath with the annual amounts of mileage for his motor vehicles, which amounts were multiplied times the standard mileage rate to produce a reconstructed cash expenditure for automobile operation. Agent McGrath also located specific items purchased for cash and unreported amounts of business income and interest which were added to the other cash expenditures. Then Agent McGrath determined the sources of cash and reduced the cash expenditures by amounts of cash from reported and nontaxable sources. Based upon this method of indirect reconstruction, respondent determined, in the notice of deficiency, that petitioners' gross receipts were understated in the

following amounts: 1980 - $4,924.21, 1981 - $8,277.73 and 1982 - $9,903.14.

At trial and on brief respondent adjusted downward the amounts of proposed understatements, computing the reduced amounts as follows:

1980

Cash expenditures based upon amounts reflected in petitioners tax return	$8,223.61
Autombile expenses-14,338 x $.09	1,290.42
Purchase of automobile for cash	3,925.00
Customer receipt not deposited in checking account[5]	276.00
Unreported interest income-savings account	159.88
Sources of cash[6]	(4,400.00)
Interest from a certificate of deposit	(2,100.35)
Interest from a certificate of deposit	(2,100.35)
Other cash available	(1,500.00)
Total proposed understatement	$3,774.21

1981

Cash expenditures based upon amounts reflected	$9,639.00
Automobile expenses-14,097 x $.09	1,268.73
Sources of cash	(5,480.65)
Total proposed understatement	$5,427.08

1982

Cash expenditures based upon amounts reflected in petitioners' tax return	$13,847.91
Automobile expenses-12,847 x $.09	1,156.23
Cash to purchase condominium	4,600.00
Sources of cash	(11,602.91)
Total proposed understatement	$ 8,001.23

Petitioners, in their reply brief, submitted their schedules of cash expenditures and sources, but they did not eliminate those cash expenditures which were traceable to a reported or nontaxable source. Under petitioners' schedules and to their own detriment, they arrived at cash expenditures of $35,289.25 and $54,762.14 for 1980 and 1982. For 1981, petitioners arrived at cash expenditures of $8,483.64. Petitioners did not reconcile their schedules to those of respondent, although it appears that the difference between respondent's and petitioners' 1981 cash expenditures approximates the $1,268.73 reconstruction by respondent of cash expenditures

regarding the operation of petitioners' automobiles. (Respondent's $9,639 less petitioners' $8,483.64 equals $1,155.36.)

Petitioners' schedules also reflected sources of income which were included in the amounts they reported on their returns thereby either inflating their sources or duplicating the eliminations made by respondent in his expenditures calculation, with some exceptions. Neither party attempted to reconcile the differences between their calculations. Petitioners contend that the following items were nontaxable sources which respondent failed to take into account:

1980

Sale of Automobile, May 1980	$ 900.00
Opening cash	1,000.00
Sale of dining room set "sold in 1979-cash carried into 1980"	4,000.00
Total source items not considered by respondent	$5,900.00

1981

"Sale of Personal Goods"	
Blackboard	$ 40.00

Upright piano	600.00	
Draperies	22.50	
2 clocks	100.00	
Silver	210.00	
Lawn mower	60.00	
Dog run	35.00	
Typewriter	45.00	
3 suits	75.00	
Toys	12.00	
Table cloth and napkins	79.50	
Ruby pin	200.00	
Area rug	100.00	
Tea service	53.00	
Mirror	75.00	$1,707.00
Cash from relatives		140.00
Total source items not considered by respondent		$1,847.00

1982

"Sale of Personal Goods"	
2 chairs	$300.00
Lg. slate pool table	830.00
Used violin and case	250.00
Girls' bedroom set	275.00
Walnut king size bed	480.00
Electric guitar and case	150.00
Large sofa	630.00
Boy's bed, toy box and curtains	120.00
2 custom king spreads	110.00
Child's desk antique	62.50
Clock	482.00
2 art glass bedroom lamps	250.00
Dog house	40.00

2 lawn mowers	90.00	
Custom bedroom draperies	95.00	
Child's curtains and spread	48.00	
8 place setting - china	89.00	
Lg. outdoor storage building	175.00	
Toys	26.40	
Better clothes	76.00	
Diamond ring	465.00	$5,043.90
Cash from relatives		160.00

Total source items not considered by respondent $5,203.90

Petitioners take the position that respondent must show or has the burden of showing that his computation is correct. Normally, respondent's determination is afforded a presumption of correctness and it is the taxpayer or petitioner's burden to overcome the presumption and/or show that respondent erred. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). Respondent's use of a method of reconstructing a taxpayer's income is not arbitrary and unreasonable so as to shift the burden of going forward with the evidence to respondent if there

is a reasonable basis for reconstructing income. Helvering v. Taylor, 293 U.S. 507 (1935). If a taxpayer does not, for example, maintain adequate books or records, it may be reasonable for respondent to use reconstruction methods. Harper v. Commissioner, 54 T.C. 1121, 1128-1129 (1970). In this case petitioners did not provide respondent's revenue agent with records of their income from Creative Sound. When petitioners did provide billing records to respondent's counsel, the records reflected less than the amounts reflected on petitioners' tax returns and deposits in their bank account. We, accordingly, find that respondent was not unreasonable or arbitrary in resorting to a reconstruction method to determine whether petitioners' gross receipts or income were underreported for the 3 years in issue.

We next consider whether respondent used an accepted method of reconstruction

of petitioners' income for the taxable years 1980, 1981 and 1982. The cash expenditures method of reconstruction[7] is a variation of the net worth method[8] and is based on the assumption that absent some explanation, excess expenditures over known sources of funds represent unreported taxable income. Taglianetti v. United States, 398 F.2d 558, 562-563 (1st Cir. 19687), affd. per curiam on another issue 394 U.S. 316 (1969). "A . . . deficiency determined by use of the cash expenditures method is presumptively correct, and the burden of proof is upon the taxpayer to demonstrate otherwise." (Case citations omitted.) DeVanney v. Commissioner, 85 T.C. 927, 930-931 (1985).

Petitioners, in their reply brief and without apparent understanding of the theory of the cash expenditures method, attempted to present their own cash expenditures computation. Petitioners' approach falls short of meeting their

burden of showing respondent's determination to be in error or that they had sufficient nontaxable sources of cash to overcome the amount of excess expenditures developed in respondent's computation. Within petitioners' computation, however, we have found some points which require discussion and result in some adjustments to respondent's computations. For 1980, petitioners assert, and we agree, that respondent failed to give credit for the $1,000 of cash on hand that Mr. Hefti disclosed to Revenue Agent McGrath. Also for 1980, petitioners have asserted that they sold assets for cash or had cash on hand from a prior year sale of assets which represented a nontaxable source of cash. We are not able to adjust respondent's computation for these items on two grounds: (1) Petitioners have provided no supporting documentation or corroborating evidence of these sales.

We have nothing more than petitioners' uncorroborated testimony of items sold which surfaced only after the trial began, although requested by respondent's revenue agent and attorney during the administrative and litigation portions of this matter.[9] (2) Petitioners have not shown that the automobile or dining room set had not been claimed as business assets which had been depreciated and may be subject to recapture provisions. Moreover, petitioners have not shown that these assets were not sold at a profit, which would require their inclusion in petitioners' income and, therefore, not represent nontaxable sources. Because petitioners admitted that these alleged sales proceeds were not included in their gross income and because they have not proven their bases in these assets, we are unable to further reduce respondent's cash expenditures computation.

Petitioners, for 1981 and 1982,

claimed that they received $140 and $160, respectively, in cash from relatives for birthdays and similar occasions. We find this to be a fact and, accordingly, respondent's 1981 and 1982 cash expenditure computations should be reduced by these amounts. Petitioners also claim to have sold a relatively large number of "personal" assets during 1981 and 1982, for amounts totaling $1,707 and $5,043.90, respectively. Here again we are unable to make adjustments to respondent's computations because of the uncorroborated nature of petitioners' contentions and the possibility that these items may have generated income which petitioners admittedly did not report.

We find that respondent was justified in using a reconstruction method and that the method used has not been shown to be error, except as redetermined in this opinion.

Petitioners' Residence -

Use for Business

Petitioners operate their business enterprise exclusively out of their residence. Petitioners' residence is comprised of two attached buildings. The original or main building was a residence comprised of a basement and three stories with a two-car garage on the first level under which there was no basement area. A second two-story building or addition, which is attached to the main building by a breezeway, was added during the period 1980 through 1981. The addition was designed as a four-car garage on the first level and subdivided rooms on the second level. The parties are in disagreement about the exact square footage of the combined buildings. Petitioners submitted a blueprint which they calculated to reflect 9,142 square feet and respondent contends that his survey, conducted by an Internal Revenue Service engineer, totaled 8,900 square feet.[10] The 242

square-foot difference between the parties is attributable to areas on the third floor of the main building which are somewhat inaccessible due to the slope of the roofline that causes a relatively abrupt reduction in the height of the ceiling. Although we agree with petitioners that this space is available for some purposes, we also, to some extent, agree with respondent that the use is limited because of the declining roofline. Because the areas in dispute would not be usable on an equal basis with other areas of the structure, we find, for purposes of this case, that the actual usable square footage of the residence is 9,021 square feet.[11]

For the taxable years 1980, 1981 and 1982, petitioners claimed depreciation on the main building based upon an 89 percent business usage. The main building was a 40-year useful life and petitioners' cost basis is $121,380.06.[12] Respondent,

in the notice of deficiency, without questioning the useful life or cost basis, allowed depreciation on the main building utilizing a business basis of $9,640 which amounts to a 7.94 percent business usage. Petitioners also claimed depreciation based upon 100 percent business use of the following listed realty:

Description	Date Acquired	Cost	Life/ Rate
Studio II	06/78	$ 1,592.39	15 Yrs.
Third Floor Storage	1978	14,751.46	15 Yrs
Warehouse (Addition)	1980	33,012.43	15 Yrs.
Misc.[13]	4/81	2,114.94	9/10%
15 Yr. Real Property	4/81	25,461.62	9/10%

Respondent, in the notice of deficiency, disallowed all depreciation connected with the above-listed realty items and petitioners have presented no specific evidence or reference in their briefs as to most of these specific items. Our analysis of the realty is on a room-by-room basis in accord with the parties' presentations.

Petitioners bear the burden of proving entitlement to deductions which respondent has disallowed. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). Section 167 allows taxpayers to deduct, as depreciation, a reasonable allowance for wear and tear of property used in a trade or business. Where, however, a taxpayer uses a portion of their dwelling or residence for business purposes, special rules and limitations have been established by Congress. Section 280A provides, in pertinent part, as follows:

> (a) GENERAL RULE.--Except as otherwise provided in this section, in the case of a taxpayer who is an individual * * *, no deduction otherwise allowable under this chapter shall be allowed with respect to the use of a dwelling unit which is used by the taxpayer during the taxable year as a residence.
>
> * * *
>
> (c) Exceptions for Certain Business or Rental Use; Limitation on Deductions for Such Use.--
>
> (1) Certain business use.--Subsection (a) shall not apply to any

item to the extent such item is allocable to a portion of the dwelling unit which is exclusively used on a regular basis--

(A) [as] the principal place of business for any trade or business of the taxpayer,

(B) as a place of business which is used by patients, clients, or customers in meeting or dealing with the taxpayer in the normal course of his trade or business * * *.

* * *

(2) Certain storage use.--Subsection (a) shall not apply to any item to the extent such item is allocable to space within the dwelling unit which is used on a regular basis as a storage unit for the inventory of the taxpayer held for use in the taxpayer's trade or business of selling products at retail or wholesale, but only if the dwelling unit is the sole fixed location of such trade or business.

In this statutory framework, respondent questions whether 89 percent of petitioners' residence was "exclusively used on a regular basis." Respondent determined that about 7.94 percent of the main building and no part of the addition were used for business purposes. Respondent argues that petitioners are not entitled to claim any room which is

not exclusively and regularly used for business purposes. Petitioners argue that they are entitled to 89 percent of the main residence for business purposes, either because they use it exclusively and regularly for business purposes or that it is used for storage which is an exception to the "exclusively" requirement so as to be allowable as an allocable portion of the particular room.

We must, therefore, determine whether petitioners used each of these rooms "exclusively" and on a "regular basis" or whether any portion of a room was used for storage of business inventory. The legislative history underlying the 1976 enactment of section 280A contains the following commentary on the term "exclusive" in S. Rept. 94-938, 4, 148, 1976-3 C.B. (Vol. 3) 49, 186:

> Exclusive use of a portion of a taxpayer's dwelling unit means that the taxpayer must use a specific part of a dwelling unit solely for the purpose of carrying on his trade or business.

The use of a portion of a dwelling unit for both personal purposes and for the carrying on of a trade or business does not meet the exclusive use test Thus, for example, a taxpayer who uses a den in his dwelling unit to write legal briefs, prepare tax returns, or engage in similar activities as well as for personal purposes, will be denied a deduction for the expenses paid or incurred in connection with the use of the residence which are allocable to these activities. * * *

Respondent, during 1980 and 1983, issued Proposed Income Tax Regs. section 1.280A-2(g)(1), which remains outstanding,[14] defining the "exclusive use requirement," as follows:

(g) Exclusive use requirement--(1) In general. Paragraph (b), (c), or (d) of this section may apply to the use of a portion of a dwelling unit for a taxable year only if there is no use of that portion of the unit at any time during the taxable year other than for business purposes. For purposes of section 280A(c)(1) and this section, the phrase "a portion of the dwelling unit" refers to a room or other separately identifiable space; it is not necessary that the portion be marked off by a permanent partition. * * *

The Senate Report underlying the 1976 enactment of section 280A also comments upon used on a "regular basis" requirement, in S. Rept. 94-938, 4, 148,

1976-3 C.B. (Vol. 3) 49, 186, as follows:

> In addition to the exclusive use test, the committee's amendment requires that the portion of the residence used for trade or business purposes must be used by the taxpayer on a regular basis in order for the allocable portion of the expenses to be deductible. Expenses attributable to incidental or occasional trade or business use of an exclusive portion of a dwelling unit would not be deductible even if that portion of the dwelling unit is used for no other purpose.

Congress has imposed rather stringent conditions upon the use of a dwelling or residence for business purposes. We have considered situations where taxpayers have tried to show that the residence use was for business purposes and/or used by clients. See Frankel v. Commissioner, 82 T.C. 318 (1984); see also Green v. Commissioner, 78 T.C. 428 (1982), revd. 707 F.2d 404 (9th Cir. 1983). Here, petitioners are not confronted with the question of whether clients use some of their residence for business purposes. Petitioners' principal and sole place of business is in their home. Petitioners

are confronted, however, with the burden of showing exclusive and regular use as required in section 280A and explained in the legislative history. Any personal use of a room or segregated area will preclude its use in computing depreciation or other allocable expenditures, unless some or all of the use of the room was for the storage of inventory.

Petitioners have contentiously and doggedly contended that 89 percent of their main residence and 100 percent of their addition were being exclusively and regularly used for business purposes during the taxable years 1980, 1981 and 1982. The correlative of petitioners' position is that they lived in no part of the addition and that they, along with their two children, resided in only 11 percent of their residence. Petitioners would essentially ask us to find that they had no personal use of any part of an approximately 9,000 square foot residence

other than two or three bedrooms, a couple of bathrooms and the kitchen. They have gone to great lengths to use nomenclature intended to convince us that a dining room is a "conference room;" and a living room or den is "Room 102" or some type of music room because it has a piano in addition to other normal household furnishings. Petitioners attempted to convince us that they and their children had no social or personal life in any portion of the residence other than a few bedrooms and the kitchen. They have stated that the Christmas tree by the front entry was not for the family, which included young children, but was for clients to enhance the mood of the season for business purposes. Mr. Hefti testified that he did not read stories to his children in the den, living room, etc., but only did so in the children's bedroom.[15] Moreover, he stated that the children were not permitted in any other part of the

residence and were limited to watching television in their room, even though petitioners maintain a large screen television in the den.

Respondent, through cross examination, third-party testimony and documentary evidence has effectively shown that petitioners' claimed percentage business usage was substantially overstated and we are unable to believe petitioners' testimony regarding their "business" use of the residence. Clients of petitioners entered the residence through a back stair which went directly to Mr. Hefti's office area on the second floor. Some of the first floor rooms (dining, den, living room, etc.) were used for meeting and dealing with clients and also for production of video materials. But the majority of petitioners' identifiable business concerned audio work which was accomplished mainly in the areas solely dedicated to business use.[16] Social

acquaintances of petitioners were invited into petitioners' residence and were entertained in areas which petitioners contend were used only for business, i.e., den. Although some of the common areas in the residence had some equipment which may have been used for business purposes, the rooms were not exclusively and regularly so used. Based upon the facts and circumstances contained in this record we must redetermine the exclusive and regular usage of each room for business purposes by petitioners.

We have carefully reviewed the transcript, documentary evidence and the parties' briefs and hold the following rooms or portions of rooms[17] to be business areas which meet the requirements of section 280A:

Room Number	Percentage Business Use
001	25
002	0
003	0
004	0
005	0

006	100
101	0
102	0
103	0
104	0
105	0
106	0
107	0
108	0
109	0
201	100
202	100
203	100
204	100
205	100
206	100
207	0
208	100
209	100
210	100
212	0
213	0
214	0
215	100
216	100
217	100
301	0
302	0
303	0
304	0
305	0
306	0
307	0
308	0
Addition-Rooms 101 through 215	0

Respondent also disallowed deprecia-
tion claimed by petitioners with regard

to personalty and certain items connected with the exterior of the residence. Petitioners contended that the "Conf. Rm. Furniture" shown at a cost of $11,156.43 was a business asset and respondent has argued that it is a dining room set. For the same reasons stated above, we find that although the dining room set may have been used for a conference or business purpose on occasion, the asset is primarily personal in nature and was used primarily as part of petitioners' personal furnishings. The determination disallowing the remaining depreciation items set forth in the notice of deficiency must be upheld for lack of substantiation of basis, useful life and business use by petitioners. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a).

Petitioners deducted 89.6 percent for 1980 and 1981, and 87.6 percent for 1982 of utilities and homeowners insurance

based on those claimed percentages of business use of the residence. Of these items respondent allowed only 8 percent in 1980, and 7 percent in 1981 and 1982, based upon respondent's redetermination of business usage.[18] Petitioners are entitled to deduct utilities and home owners insurance for 1980, 1981 and 1982, based upon the amounts claimed times the percentage business use determined under our room-by-room analysis of their residence.

Petitioners claimed deductions for maintenance in the amounts of $19,142.37, $9,670.62 and $4,419.59, for the taxable years 1980, 1981 and 1982, respectively. Respondent disallowed all but $326.65 of the amount claimed for 1982. Petitioners offered their ledger sheets which reflected cash and check payments for maintenance. The ledger records are segregated into amounts solely for business maintenance and amounts for

overall maintenance of the residence. The overall maintenance, which petitioners have labelled as "partial maintenance," was claimed in proportion to the business usage contended by petitioners. The overall or "partial maintenance" generally pertained to repairs and maintenance to the outside structure of the residence and to the surrounding grounds. The "solely for business" maintenance was for inside repairs to the residence and to petitioners' business equipment and assets. We have reviewed petitioners' ledgers or summaries and find them to be properly prepared so as to reflect actual expenditures for which petitioners have documentation.[19] Although respondent argues that petitioners have not substantiated their maintenance expenditures due to a lack of testimony, we find that petitioners' record summaries are reliable as depicting actual expenditures supported by underlying

documentation about which respondent was free to cross examine petitioners. Respondent, after stipulating to these records as true and correct copies of petitioners' summaries, engaged in limited crossexamination on these records and did not offer contradictory evidence on the maintenance items.

Having found that petitioners' maintenance amounts have been substantiated,[20] we must now determine whether any portion is deductible under sections 162 and 280A. After complete review of the "solely for business" portion of maintenance segregated by petitioners in each year, we find that the items claimed substantially related to maintenance and repair of the equipment, with only limited references to structural-type repairs or painting. Instances of structural-type repairs were small in amount and generally referenced to the "studio." We, accordingly, find

that petitioners are entitled to the following amounts of "solely for business" maintenance: (1) 1980 - $1,458.78; (2) 1981 - $2,334.11; and (3) 1982 - $959.29.

Concerning the maintenance of the residence as a whole and to the grounds, respondent argues that petitioners are not entitled to any amount based upon the proposed regulations under section 280A and several cited cases. Respondent's theory for disallowance of these maintenance items (lawn maintenance, landscaping, driveway repair, etc.,) is that they are "inherently personal expenses." Respondent's reference to Proposed Income Tax Regs. section 1.280A-2(i)(7), 45 Fed. Reg. 52405 (Aug. 7, 1980), is inapposite. The section referenced contains an example of the operation of Proposed Income Tax Regs. section 1.280A-2(i)(5), 45 Fed. Reg. 52404 (Aug. 7. 1980), which provides for an ordering of types of deductions where the

deductions from a particular business activity in the home exceeds the income from that same activity. In that type of circumstance the illustration or example, lawn care, was relegated to the third level or tier of deductions which were not deductible in excess of the income from the home office business activity. The cited sections of the proposed regulation in no way stand for the generalized proposition that lawn care and related maintenance items are inherently personal and/or not deductible. To the contrary, the section would permit lawn care deductions if the amount, considered in a designated relationship to other types of deductions, did not exceed a taxpayer's income from such activity. Petitioners, after considering all deductions claimed, reported some net income from their business in each of the 3 taxable years.

The series of cases cited in

respondent's brief, all of which concern pre-section 280A years (pre-1976 taxable years), concern the proximate relationship between shrubbery and lawn-type care and the business conducted in a taxpayers' residence.[21] Greenspon v. Commissioner, 23 T.C. 138, 151 (1954), affd. 229 F.2d 947 (8th Cir. 1956); Galazin v. Commisioner, T.C. Memo 1979-206; Butz v. Commissioner, T.C. Memo 1976-118; Gill v. Commissioner, T.C. Memo 1975-3. In one of the cited cases we reasoned that the taxpayer was not entitled to deduct lawn care expenses because he did not have clients visiting his office in his home. Here, however, petitioners had clients visiting on a regular basis and the appearance of the residence and the grounds would be of significance to petitioners' business operation. Accordingly, we hold that petitioners are entitled to deduct a proportionate percentage of the "partial" or overall

maintenance based upon the percentage business use derived from our room-by-room analysis of petitioners' residence.[22]

Travel and Entertainment Expenses

Petitioners claimed travel and entertainment, and promotion expenses in each of the 3 taxable years. Respondent disallowed the entire amounts claimed and petitioners have conceded reductions to the amounts claimed leaving the following amounts in dispute:

Taxable Year	Travel & Entertainment	Promotion
1980	$5,167.63	$2,092.24
1981	5,700.76	2,213.54
1982	4,490.25	2,687.02

The travel and entertainment consists of trips to Mexico, Orlando, Florida, and Niagara Falls, New York, and entertainment of clients at restaurants. The claimed promotion items consist of the purchase of food from restaurants, grocery stores and variety stores. Included in the food purchases are prepared meals, unprepared

foods, candy, beverages, etc.

As to the claimed promotion deductions, petitioners' purchases were generally from grocery stores and fast food restaurants. Petitioners kept candy in containers in the business areas[23] and provided working lunches or snacks for clients. Mrs. Hefti generally purchased the items. Mrs. Hefti could not specifically remember how she segregated personal from business purchases of these items, either at the time of purchase or at the time of the storage and use of the items. Although Mrs. Hefti had testified that she was not usually directly involved in business, she may prepare an informal lunch or snack of which she would partake. She intimated that the children only would partake of the "promotion" food when they were directly involved in the business. We find it hard to believe that Mrs. Hefti would make separate lunches or prepare them in separate kitchens on occasions

where her children were present. Most of petitioners' clients did not eat many meals at petitioners' residence. We found Mrs. Hefti's testimony on the promotion items to be elusive and unconvincing.[24] Respondent's agent analyzed all checks written to grocery stores and determined the average amount spent per week, the average amount claimed per week for business (promotion) and the average remainder that would result and presumably be personal, as follows:

Taxable Year	Total	Business	Personal
1980	$37.13	$25.72	$11.41
1981	48.14	32.65	15.49
1982	48.42	31.42	17.00

Bureau of Labor statistics for the St. Louis, Missouri, area reflect that intermediate to higher budget families of four would spend between $112.07 to $149.40 weekly, for groceries during the period 1980 to 1981. Although these averages are not conclusive, they do point

out the incredible nature of petitioners' position. This is especially so in this case where petitioners maintained only one checking account and both parties have prepared cash expenditures analyses accounting for each check and cash expenditure. These analyses, coupled with the single checking account, confirm the incredible nature of petitioners' contention.

Section 162(a) would permit a "deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." Section 274(a) adds extra requirements for taxpayers claiming a section 162(a) deduction. Where it relates to entertainment, unless the taxpayer establishes that the item was directly related to bona fide business discussion associated with the conduct of a taxpayer's business, the expenditure may not be deductible. Section 274(e)(1)

provides for an exception to the requirements set forth in section 274(a). Where "food or beverages are furnished to any individual under circumstances which [taking into account the surroundings in which furnished, the taxpayer's business activity relation to the person to whom the food and beverages are furnished] are of a type generally considered to be conducive to business deduction." See sec. 274(e)(1).

Petitioners' business circumstances are such that the exception of section 274(e)(1) is applicable. Petitioners, however, must substantiate their claimed deductions pursuant to the requirements of section 274(d) regarding the claimed promotion expenses, which primarily concern providing candy, beverages and light meals to clients during working meetings. See section 1.274-2(f)(1) and (2), Income Tax Regs. In this regard, secton 274(d) provides, in part, as

follows:

> (d) * * * No deduction shall be allowed--
>
> (1) under section 162 * * * for any traveling expense (including meals and lodging while away from home),
>
> (2) for any item with respect to an activity which is of a type generally considered to constitute entertainment * * *
>
> * * *
>
> unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating his own statement, (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment * * *, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained * * *.

Petitioners have substantiated and are entitled to a "promotion" deduction of $523.06 for 1980, $553.85 for 1981 and $671.75 for 1982.

We now consider the travel and entertainment disallowed deductions. Petitioners' claimed deductions are composed of two general categories: (1) travel away from home, and (2) local

entertainment of clients. The travel while away from home and entertainment of clients come under the same statutory provisions as the "promotion" deduction and petitioners must substantiate their claimed deductions pursuant to the requirements of section 274(d).

At the time of petitioners' audit, they supplied respondent's agent with the bills, invoices and charge slips for entertainment of clients, which we presume were taken from the "monthly envelopes" maintained by Mrs. Hefti. Respondent's agent reviewed the documents and prepared a summary schedule of the items, all of which were proposed for disallowance. Thereafter, petitioners prepared their own ledger or summary schedule of the entertainment supporting documents and added notations of the "section 274(d) information" on the ledger and supporting documents.[25] Petitioners' entertainment ledger reflects the date, name of the

person entertained, amount of meal, whether it was charged or paid for in cash or check and the claimed business purpose was shown by the acronyms "GW/KB" (good will keep business) or "GW/CB" (good will create business).

Respondent's agent analyzed the number of times petitioners' entertainment ledgers reflected entertainment for four of petitioners' clients. The results of the analysis reflected a disparity between petitioners' ledger and the four witnesses testimony as follows:

Name of Witness/Client	Times Entertained Per Ledger	Per Testimony
Edward Golterman	14	3[26]
Wallace Mechler	9	3
Arthur Payne	12	often[27]
David Payne	16	1

During the years in question petitioners retained bills, invoices and charge slips which contained insufficient information to meet requirements of sections 162(a) and 274(d). During and after the audit petitioners attempted to reconstruct

records which would satisfy the section 274(d) requirements. Names, purposes and other information were added to the underlying documentation and the ledgers or summaries were created. Petitioners, in their zeal to substantiate the amount claimed on their returns have ineffectively attempted to place a name and purpose with all claimed entertainment events. Section 274 requires documentary evidence which would adequately corroborate a taxpayer's statement. Petitioners' documentary evidence on this item only partly satisfies this requirement. The testimony of some of petitioners' clients corroborate that, to some extent, petitioners' ledgers and underlying documents do correctly reflect business entertainment within the meaning of sections 162 and 274. Based on the testimony, documents and respondent's agent's analysis, which is supported in the record, we find that petitioners have

substantiated and are entitled to entertainment deductions of $572.94, $633.31, and $656.73 claimed as part of travel and entertainment for the taxable years 1980, 1981 and 1982, respectively.

Petitioner claimed deductions for trips to Mexico and Niagara Falls in 1980 and 1981, and to central Florida in 1982. Petitioners traveled together for the two trips to Mexico and Niagara Falls and they also took their two children on their central Florida trip. Petitioners claimed to have made the trips to record sound effects, unusual music and video materials for their business library. Petitioners stated that they kept a log or diary of their travel, but were not able to produce the contemporaneous logs or diaries. Petitioners attempted to offer handwritten reproductions of the alleged original diaries or logs which they had added to their ledgers during or following the audit process, but these were not received

into evidence.[28] Without the contemporaneous diaries or other corroborative evidence, as required by section 274, we are unable to approve any entitlement to petitioners for these travel expenditures.

Even if petitioners had produced the documentary evidence they described, the trips, with the exception of central Florida, were not in connection with a particular client or job. We are also at a loss to understand why petitioners would travel to the same locations 2 years in a row, when considering the alleged business purpose for the trips. The trip to central Florida included the young children, which tends to make them more suspect. Additionally, petitioners and their children visited Disney World and numerous other amusement and tourist attractions. Although petitioners connected the Florida trip with a particular client who was interested

in some Florida promotions, no direct connection to the myriad tourist attractions was forthcoming.

Automobile Deductions

Petitioners, during the years involved, owned three automobiles, a Chrysler New Yorker sedan, a Dodge Aspen station wagon, and a Porsche sports car. Petitioners claimed deductions based upn the premise of 100 percent use of the Chrysler and Dodge for business purposes. Petitioners did not claim the Porsche, which was used solely for personal purposes. Petitioners claimed deductions regarding the Chrysler based upon actual expenditures and utilized an estimated method of mileage times a fixed rate per mile for the Aspen. The amount of petitioners' claimed deductions, respondent's disallowances and petitioners' concessions are as follows:

Year	Amt. Claimed On Return	Disallowed by Respondent

Year			Conceded by Petititioner[29]	In Dispute
1980	$4,100.94	$3,035.38	$1,586.00	$1,449.38
1981	4,578.02	3,114.89	1,765.85	1,349.04
1982	3,322.44	2,025.64	0	2,025.64
Totals	12,001.40	8,175.91	3,351.85	4,824.06

Respondent allowed the actual expenses substantiated by petitioners and denied the remainder of the claimed amounts based upon three theories which have been argued in respondent's brief, as follows: (1) The duplication of expenditures by claiming the invoices and the monthly statements, which petitioners have conceded; (2) the lack of business use of more than one car, which petitioners contest; and (3) case law prohibiting the use of both the actual and estimated methods in the same taxable year. Moreover, respondent intimates that petitioners have claimed all of their

actual expenses for both automobiles and have attempted to claim the estimated method for the Dodge, in addition, which would constitute another form of duplication by petitioners. Respondent suggests that it is more than a coincidence that petitioners would have invoices and supporting documents for one "business" automobile and none available for the other, as petitioners have claimed on their ledgers.

Mr. Hefti's testimony on the business use of the automobiles was incredible, as illustrated by the following exchange during cross examination:

> Q Okay. You owned three cars during the years at issue, you owned three cars, correct?
> A Right.
> Q A Dodge Aspen which is a station wagon?
> A Right.
> Q Chrysler New Yorker?
> A Yes.
> Q And a Porsche?
> A Yes.
> Q Now, you testified on direct the Chrysler New Yorker was used by you exclusively for business, 100 percent, yes?

A Yes.

Q You testified that the Dodge Aspen wagon was used by you and your wife for business, correct?

A Yes.

Q Like your truck.

A Truck.

Q Now, you told the Judge that you would go places to get away for the weekend and you go to the zoo or the park with your family. Which car would you take?

A I would take the Porsche.

Q All four of you --

A Well, my boy was very little then. We took the Porsche a lot of places.

Q And your wife would -- which car did your wife normally did he drive when she would go out doing her errands during the day?

A Porsche.

Q She would drive the Porsche?

A Yes.

Q And if she went somewhere taking your children somewhere, both children would get in the Porsche and she would drive?

A It is very easy to put three people in there, especially when you have a four year old.

Q Is your wife --

THE COURT: Is it going to be your testimony that your wife oryou never used the Chrysler or Dodge for any personal purpose such as picking the children up from school or anything like that?

THE WITNESS: To the best of my recollection.

Here, again, petitioners have stated a position which defies belief.

Petitioners would ask us to believe that they went away on weekends with their children in a two-seat sports car or rented a car when they had a station wagon and sedan available--this we are unable to accept. Petitioners have also shown their zeal in seeking deductions by the double claiming of automobile expenses for 2 years, which they have now conceded. We find that petitioners have failed to carry their burden of proving that they are entitled to automobile expenses in excess of the amounts allowed by respondent in each of the 3 years set forth in the notice of deficiency.

Also, as a matter of law, we have decided that taxpayers may not use the estimated method of computing automobile expenses if they operate more than one automobile at a time for business purposes. West v. Commissioner, 63 T.C. 252, 254 (1974). In West we approved of respondent's Revenue Procedure 70-25,

1970-2 C.B. 506, which has been superceded by Revenue Procedures 80-7, 1980-1 C.B. 590, and 82-61, 1982-2 C.B. 849, all of which provide procedures to claim automobile deductions by means of a specific rate times the number of business miles traveled. All of the respondent's procedures are optional and may not be used by taxpayers who have fleet operations or who operate more than one automobile at a time. Accordingly, petitioners are limited to proving their actual automobile expenses. Petitioners are not entitled to use the estimated method for one automobile and actual for the other. Respondent's agent has already reviewed petitioners' underlying documentation and allowed the amounts that were substantiated. Petitioners have not proven that they are entitled to amounts in excess of those allowed by respondent.

Rental Property - Capital vs. Expense - Depreciation

Petitioners purchased a condominium known as Unit 612, The Knolls Condominium, Laurel Building located at Lake of the Ozarks, Missouri. The purchase price was $46,311. Under a December 10, 1982, agreement petitioners placed their condominium in the rental pool. Pursuant to the agreement, petitioners were required to furnish the various rooms of their condominium unit. The items were purchased during December 1982, and petitioners deducted the full cost of some furnishings and other expenses connected with their condominium in the 1982 taxable year.[30] Respondent disallowed the entire claimed expense, labeling it at start-up costs. Respondent allowed 60-month amortization under section 195.[31] Respondent also disallowed a portion of petitioners' claimed depreciation on the condominium property based upon the theory, as contained in a proposed regulation, that petitioners are entitled

to only a fractional portion of their first year depreciation where the property is placed in service near the end of the taxable year. There appears to be no dispute about the amounts involved in this issue.

Petitioners contend that the full depreciation is permissible no matter when the property is placed in service. Petitioners do not address the "start-up" disallowance in their briefs. Respondent disallowed $2,442.32 as start-up expenses. Included within these expenditures are travel in connection with purchase and setting up the unit, insurance, condo fees, etc. These items were paid on or about December 10, 1982. Although certain start-up expenses are not deductible in the year of payment, Richmond Television Corp. v. United States, 345 F.2d 901 (4th Cir. 1965), vacated and remanded on other issues 382 U.S. 68 (1965); others may be deductible in a section 212(2)

circumstance, Hoopengarner v. Commissioner, 80 T.C. 538 (1983), affd. 745 F.2d 66 (9th Cir. 1984), but the Eighth Circuit to which an appeal in this case would lie, has refused to follow the Hoopengarner holding, Aboussie v. United States, 779 F.2d 424, 428 n. 6 (8th Cir. 1985). See also Johnsen v. Commissioner, 83 T.C. 103 (1984). Following our holding in Golsen v. Commissioner, 54 T.C. 742, 757 (1970), affd. 445 F.2d 985 (10th Cir. 1971), we fill follow the Eighth Circuit's holding and petitioners are not entitled to deduct the amounts respondent has disallowed, as start-up expenditures, for petitioners' 1982 taxable year.

As part of a $2,023.16 depreciation deduction claimed in connection with the condominium for 1982, respondent disallowed $1,516.27 of $1,654.11 claimed for the condominium furnishings with a 5-year life. The petitioners claimed a full-year deduction for depreciation at

a 15 percent rate and respondent allowed only 1.25 percent based upon 1 month's use in 1982. Respondent relies upon Proposed Income Tax Regs. section 1.168-2(f)(1) and (4), 49 Fed. Reg. 5940 (Feb. 16, 1984), which would limit petitioners' "ACRS" depreciation to the 1.25 percent amount that respondent allowed. Petitioners have made no legal or factual argument upon which we are able to find that respondent's determination is in error and, accordingly, petitioners have failed to carry their burden of proof on this issue. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a).

Miscellaneous Deductions - Cost of Sales

Respondent, in the notice of deficiency, disallowed various portions of deductions under the following categories: Cost of Sales, Wages, Office Supplies, Dues and Publications, and Cleaning Supplies. The specific amounts

claimed, disallowed and remaining in dispute were reflected in respondent's Appendix A, which has been attached as an appendix to this opinion. The disallowances of wages and cost of sales involved two types of items: (1) supply items, and (2) wages paid to petitioners' children in each taxable year. Concerning the supply items included within Cost of Sales, respondent disallowed specific amounts and allowed specific amounts based upon actual substantiation provided by petitioners at the audit. Petitioners have not provided adequate testimony or other evidence to carry their burden of showing that they are entitled to more than the amounts allowed by respondent for each of the taxable years in issue.

Petitioners claimed deductions for wages[32] paid to their children during the taxable years under consideration. Respondent disallowed the entire amount claimed for lack of proof that such

payments were ordinary and necessary business expenses. Here again petitioners' explanation is contradictory to their explanation given in an attempt to claim nearly 90 percent of their home for business purposes. Petitioners testified, in support of their claiming almost 90 percent of their home for business, that the children were essentially confined to their rooms and the kitchen. As a reason for the claimed confinement of the children, petitioners cited the delicate and expensive nature of the technical business equipment. Whereas, in connection with their alleged payment of a salary to the children, petitioners would have us believe that the children were operating this same type of equipment. When coupled with the fact that both children were of tender years[33] during the years in question, petitioners' position on this item also defies belief. We hold that petitioners are not entitled

to any amount claimed as wages paid to their children during the taxable years 1980, 1981 and 1982.

With respect to the remaining categories of expenses claimed, respondent disallowed parts of them for lack of substantiation or business purpose. For example, with respect to Dues and Publications, petitioners had claimed the cost of the daily newspaper and a magazine on dolls as part of this item, which respondent disallowed. Petitioners steadfastly testified that they rarely if ever read the newspaper and that it was purchased for clients to read. Likewise, petitioners stated that the "doll magazine" was not for their daughter, but that "it was a general interest magazine which was put out on the tables." With respect to Office and Cleaning Supplies petitioners did not effectively segregate personal from business. With respect to these items

respondent has allowed a portion of the amount claimed based upon actual documentation. Petitioners have not provided credible testimony or other evidence to show, as it is their burden to do, that they are entitled to more than respondent has allowed for each of these items. Welch v. Helvering, supra; Rule 142(a). Therefore, respondent's computations on this issue are upheld.

Self-Employment Tax

Sections 1401 and 1402 provide for self-employment tax upon self-employment income which may be derived from a trade or business. See also sections 1.1402(a), 1.1402(a)-2 and 1.140-2(b)-1, Income Tax Regs. There is no question here about the existence of self-employment income. The question that may[34] confront us is whether Mrs. Hefti, in addition to Mr. Hefti, is responsible for self-employment tax. Respondent, in the notice of deficiency, divided the income from

Creative Sound and determined that both petitioners were liable for self-employment tax. Petitioners bear the burden of showing the proper amount of self-employment tax and whether respondent's determination was in error. Welch v. Helvering, supra; Rule 142(a). This issue is essentially one of fact and we have already found that petitioners "operated an audio-visual business known as 'Creative Sound,' as sole proprietors, at their family residence." Although Mr. Hefti possesses most of the technical expertise, Mrs. Hefti is responsible for the financial and recordkeeping aspects of the business. Additionally, she is involved in some of the technical aspects of the business. Based upon petitioners' testimony, the parties' stipulations and other evidence in the record, we find that both petitioners are liable for the tax on self-employment income, the amount to be determined in connection with the

parties' Rule 155 computations.

Addition to Tax - Section
6653(a), 6653(a)(1) and (2)

Respondent determined an addition to tax attributable to negligence or intentional disregard of rules and regulations under sections 6653(a) and 6653(a)(1) and (2). Petitioners bear the burden of proving or establishing that the addition to tax is inappropriate and/or that respondent's determination is in error. Rule 142(a).

Respondent has argued that petitioner should be liable for the addition to tax because petitioners' books and records were substantially inaccurate. The record in this case amply supports respondent's argument and further reflects that petitioners' records were to some extent incomplete (income records) and contained purely personal expenses which petitioners sought to deduct as business. We, accordingly, hold that petitioners are

liable for the additions to tax under section 6653(a) for 1980 and 6653(a)(1) and (2) for the taxable years 1981 and 1982.

We find that respondent's determination, as set forth in the notice of deficiency, is not in error, except as noted or stated otherwise in this opinion.

To reflect the foregoing.

Decision will be entered under Rule 155.

Footnotes

1 Petitioners were represented by Attorney Jeff A. Schnepper for part of the pretrial, trial and part of the post-trial period. Attorney Schnepper filed petitioners' original brief and due to disagreement between Attorney Schnepper and petitioners, petitioners were granted leave to file their own supplemental briefs. The differences between petitioners and Attorney Schnepper

increased and Attorney Schnepper was permitted to withdraw on August 7, 1987, after protracted jousting between petitioners and Attorney Schnepper.

2 For convenience we have combined our findings and opinion and present them in groupings by issue, with the exception of the general or background information which is so labeled.

3 All section references are to the Internal Revenue Code of 1954 as amended and in effect during the years before the Court and all rule references are to the Tax Court's Rules of Practice and Procedure. Respondent determined additions to tax under section 6653(a) for 1980 and section 6653(a)(1) for 1981 and 1982, the first two years to which section 6653(a)(1) may apply.

4 The notice of deficiency contains numerous adjustments. All of the adjustments were the subject of controversy by the parties. Respondent

has conceded limited amounts of some adjustments and petitioners were left to their bruden of proving their entitlement to the remaining deductions, or the error of respondent's determination that income was underreported. The adjustments, concessions and amounts that remained in dispute for purposes of trial, briefing and opinion have been set out by respondent in "Appendix A," which was attached to his opening brief and is attached to this opinion for convenient reference as Appendix A. Petitioners have not offered evidence or argument with respect to all adjustments and we have considered any such failure to be either for lack of ability to go forward with evidence or for purposes of concession.

5 Petitioners conceded that they failed to include this amount in the checking account and that, accordingly, it was not reported in gross receipts for 1980.

6 These amounts in each of the 3 years

involved represent Agent McGrath's review of cancelled checks which were cashed or converted to cash or where the check was written for more than the purchase and cash was returned to petitioners.

7 This method has also been called "the source and application of funds method."

8 The net worth method was sanctioned by the Supreme Court in Holland v. United States, 348 U.S. 121, 135-137 (1954).

9 There is also contradicton in petitioners' assertions because they have otherwise argued in this case that they have relatively little personal assets and devote 100 percent of their time and effort to their business. In their effort to substantiate an apportionment of nearly 90 percent of their residence for business purposes they classify, what in most homes would be a dining room, as a conference room. In furtherance of their position they point out that the table and chairs in the "conference room" are conference

table and chairs. Their blueprint and testimony concerning their residence references no dining room. However, when it is expedient to have a nontaxable source of cash, they suddenly reflect the $4,000 sale of a "personal" dining room set. We find this type of inconsistency to strongly suggest fabrication and to limit petitioners' testimony to a low level of credibility to be afforded little weight and probative value as evidence.

[10] Prior to trial respondent moved for and was granted an order requiring petitioners to permit respondent access to their residence for purposes of observation and measurement.

[11] For purposes of the parties' computation of the percentage of expenditures or depreciation deductible, the 121 square-foot reduction from petitioners' total should be apportioned between rooms 301 and 308 based upon a ratio determined by comparing the size

of these two rooms as shown on petitioners' Exhibit 35.

[12] The $121,380.06 basis is derived by dividing the returned $108,028.25 basis by the 89 percent business allocation claimed by petitioners.

[13] We have classified this as real property because it was associated with the "15 Yr. Real Property" and had been assigned the same useful life by petitioners. There is insufficient information in the record to determine the actual nature of this property. Although we are not certain that this entry represents real property, our inability to discern whether this is realty or personalty has no effect upon and would not change the outcome of this case.

[14] Final regulations for sec. 280A have not yet been published.

[15] Petitioners contend, with approximately 9,000 square feet of space,

that they kept both children in one smaller upper floor bedroom during the years in question.

16 Respondent analyzed the billing records that petitioners made available and determined the following percentages of different types of work were performed, as follows:

Type of Work Performed	1980	1981	1982
Audio Production	63.5%	50.5%	48.3%
Audio Duplication	15.0	15.1	18.0
Video Production	1.8	2.8	4.8
Video Duplication	1.7	1.3	0.4
Other	18.0	30.3	28.5
Totals	100.0%	100.0%	100.0%

17 In instances where petitioners store business inventory they would be entitled to that portion of a room as part of the percentage business usage to compute depreciation and related expenses. Petitioners' business is service oriented and their product is mostly intangible audio and video productions. In this setting, the audio and visual tapes and

mediums are considered inventory, but the machinery, hardware, equipment and other assets utilized in creating the final product are not inventory for resale. We do not have to consider whether petitioners' supplies for business operation all within this categorization because petitioners did not testify or contend that this type of asset was stored. Moreover, the cleaning supplies and other materials used in maintaining the home may be partially deductible as part of maintenance expense and, by definition, are not part of petitioners' business inventory.

18 On brief respondent noted that the notice of deficiency was "erroneous" to the extent that it allowed 8 percent in 1980 and 7 percent in 1981 and 1982 because petitioners were entitled to only 5 percent in all 3 years. Respondent's 5 percent figure is based upon a business usage of Rooms 215, 216 and 217 only,

which equalled 461 square feet divided by respondent's calculation of 8,900 total square feet reaching a 5 percent result. Respondent does not seek an increased deficiency based upon his position, but makes this analysis a part of his argument on brief.

[19] During the taxable years 1980, 1981 and 1982, petitioners did not maintain actual ledgers or formal books. Instead they maintained envelopes, on a monthly basis, in which they placed invoices, bills and other evidence of expenditures. The contents of each monthly envelope was then occasionally sorted into specific categories, such as "Maintenance" and attached together. Petitioners brought their underlying records to the courtroom and they were available during the trial. Respondent's agent, during the examination, reviewed the underlying documentation and prepared schedules reflecting the allowed and disallowed

items. Respondent's agent's schedules have been made a part of this record, along with petitioners' summaries and they are comparable. It appears that respondent's agent saw the same underlying documentation and that there is relatively little dispute in this case concerning whether amounts were in fact expended. The question we are generally confronted with is whether the expenditure is deductible.

[20] The summation on petitioners' ledgers concede that they overclaimed $72.06 in partial maintenance in 1980, $82.08 in "solely for business" maintenance in 1981, and $30.28 in partial maintenance in 1982.

[21] One case involved a farmhouse owned by a corporation.

[22] The amounts claimed, as modified for petitioners' concession of overclaimed amounts in 1980 and 1982, are: 1980 - $17,166.23, 1981 - $7,254.43, and 1982 - $3,919.84. Because these amounts relate

to partial maintenance, it is possible, although not readily discernible from the record, that these totals for each year should be divided by the business percentage used by petitioners for that year and then multiplied by the amount of business use of the residence based upon room-by-room analysis. We leave the parties to their Rule 155 computations on this point.

23 Petitioners' testimony regarding business areas must be considered in light of their view that 89 percent of their residence was solely for business.

24 The 1980 promotion ledger shows no personal segregation of purchases whereas the 1981 ledger does show some amount of segreation. On direct testimony Mrs. Hefti stated that she would purchase personal and business items at the same time and then line out or circle the personal items to segregate them for deduction purposes. Respondent offered

several grocery store tapes, from the period in question, which reflected no segregation and some which had circled items, but for which the entire amount was claimed on petitioners' ledger-summary and income tax return. When confronted with these tapes, Mrs. Hefti attempted to change her testimony to the effect that she checked out two separate times. She indicated that on occasion $30 cash would be returned from her business purchase and that she would separately shop for personal items from the $30 cash. She also indicated that she might buy vegetables for clients at a regular supermarket and purchase other vegetables for her family or clients at a specialty market. In an attempt to support petitioners' position, Mrs. Hefti's testimony on these items became convoluted and contrived. Mrs. Hefti would have us believe that although these items were regularly purchased and available in the

residence, that she, Mr. Hefti and the two young children did not partake of candy, soda, pretzels, etc., unless they were conducting business. Furthermore, she would have us believe that they bought separate stores of these items for personal occasions. It also appears that Mrs. Hefti's testimony that the family lived on occasional $30 purchases, whereas petitioners were spending as much as $50 or more weekly on occasional snacks and meals for clients.

[25] Our analysis of the record in this case reflects that all of petitioners' ledgers were prepared at or after the time of their audit by respondent. It is likely, based upon respondent's agent's testimony and other indications, that notations on summaries and supporting documentation were added by petitioners whenever it suited their purpose. Respondent has argued that petitioners did this to "doctor" the records or as

a subterfuge. We find that petitioners did not do this to deceive respondent or the Court, but did it because of their lack of knowledge of the legal infirmity of such extraneous and uncontemporaneous commentary. Petitioners, in spite of their attorney's counseling, the Court's explanation and respondent's counsel's insistence, have considered notes that they put on documents or their ledgers (which are merely considered summaries of documents) to be evidence in support of their case and a substitute for their testimony. Petitioners' erroneous understanding of their written comments has been the cause for many inflammatory and baseless accusations by petitioners against respondent's counsel and their own counsel.

[26] Mr. Golterman testified that petitioners took him out for meals or enterainment a "few" times. Petitioners argue that the term "few" may be

interpreted differently, but we have accepted respondent's more reasonable position that it means two or three in normal parlance.

27 Mr. Payne was a personal friend of Mr. Hefti and had no direct business connection with petitioners. He could only relate one instance where he may have referred another friend to petitioners regarding the installation of a satellite dish. We are unsure about petitioners' business activity incuding the sale of hardware, and the testimony on this point was, at best, unclear. Mr. Payne was often taken to lunch by Mr. Hefti.

28 Mr. Hefti first testified that the handwritten notations on the ledger sheets were copied from the original logs or diaries of trips. When asked to produce the original logs or diaries, petitioners were unable to do so. Then Mr. Hefti changed his testimony and stated that the written notations on the ledgers were the

originals. Although Mr. Hefti may have used a play on words in the sense that the notations on the ledgers were the same as the originals, his approach was deceptive and evasive, because petitioners did not produce the "originals" and clearly did not have the ledger sheets at the time of the trips.

[29] Petitioners, on some of the ledgers concerning their claimed automobile expense deductions, conceded that they had duplicated some deductions by claiming the individual invoices and the total of the monthly statements. Although there is no clear indication in the record, it would appear that petitioners did not double deduct the invoices and monthly statements for the 1982 year. We make this assumption because petitioners did not concede any amount for 1982, as they had for the prior 2 years, and the amount claimed for the year is about 25 percent less than prior years. The 25 percent

figure is approximately correct, in theory, because actual expenses were being claimed for only one of the two automobiles involved.

30 Petitioners, for 1982, claimed a $4,465.48 loss associated with the condominium, comprised of the following amounts: Travel and entertainment expenses - $2,442.32; insurance - $127.00; supplies - $1,870.02; freight - $28.61; condo fees - $343.02; and depreciation - $2,023.16.

31 Respondent allowed the 60-month amortization under sec. 195 even though petitioners had not made the required election. Obviously, petitioners would not have made such an election where they deducted the full amount as an expense in the year of expenditure. In any event, respondent's allowance is in the nominal amount of $40.70.

32 The amounts of the claimed children's wages in dispute are $3,057.25 - 1980,

$3,800.00 - 1981, and $6,400.00 - 1982.

33 As of 1980, both of petitioners' children were under 10 years of age and the youngest was 4 years old.

34 Although respondent anticipated that petitioners might contest respondent's determination that both petitioners are responsible for self-employment tax, petitioners' briefs and supplemental filings are silent on this point.

Tax Court Order

Page 2

Docket No. 21306-84

(5) Respondent's Motions for Leave filed on April 2, 1985, and April 15, 1985, are granted, and the Clerk of the Court is herewith directed to file this date respondent's Motion for Order Compelling the Petitioners to Respond to Respondent's Request for Production of Documents or to Impose Sanctions and Motion for Order Compelling the

Petitioners to Permit Entry, Inspection, Measuring, and Photographing Property and Objects, each of which have been lodged with the Court on April 2, 1985, and respondent's Motion for Order Compelling the Petitioners to Respond to Respondent's Interrogatories to Petitioners or to Impose Sanctions, lodged with the Court on April 15, 1985.

(6) Respondent's Motion for Order Compelling Petitioners to Respond to Respondent's Request for Production of Documents or to Impose Sanctions and respondent's Motion for Order Compelling the Petitioners to Respond to Respondent's Interrogatories to Petitioners or to Impose Sanctions are granted in that petitioners shall, within 30 days of the date of service of this Order, meet with counsel for respondent and produce to him for inspection and copying the documents requested in respondent's Request for Production of Documents and answer

Respondent's Interrogatories to Petitioners, copies of each of which having been duly served on counsel for petitioners on February 25, 1985.

(7) Respondent's Motion for Order Compelling the Petitioners to Permit Entry, Inspection, Measuring and Photographing Property and Objects is granted in that petitioners shall, within 30 days of the date of service of this Order, allow respondent entry into petitioners' residence at 4 Rolling Rock Lane, Ladue, Missouri, for the purpose of inspecting, measuring and photographing property and objects. Said inspection, measuring, and photographing shall be limited to areas and objects subject to the operation of business conducted in said premises. Rule 72(b), Tax Court Rules of Practice and Procedure.

(8) The Clerk of the Court, in addition to the usual service of this Order upon counsel for the parties, shall

serve a copy thereof upon Sanford S. Neuman.

/s/ L. W. Hamblen, Jr., Judge

Dated: Washington, D.C.

April 16, 1985

UNITED STATES TAX COURT

CHARLES R. HEFTI and
MARION HEFTI

Petitioners,

v. Docket No. 21306-84

COMMISSIONER OF INTERNAL
REVENUE,

(Stamped: U. S. Tax Court Mailroom 4,
'85 Apr 15 A10:04)

Respondent.

PETITIONERS' RESPONSE TO RESPONDENT'S
MOTION FOR ORDER COMPELLING THE
PETITIONERS TO PERMIT ENTRY,
INSPECTION, MEASURING, AND
PHOTOGRAPHING PROPERTY AND OBJECTS

THE PETITIONERS ALLEGE THAT Respondent's Motion for Order Compelling The Petitioners To Permit Entry . . . as written is in direct violation with United States Court Rule 72(b).

IN SUPPORT THEREOF, the Petitioners respectfully show unto the Court as follows:

1. This case appears on a two-week trial calendar at St. Louis, Missouri, commencing on May 6, 1985.

2. The Respondent filed above mentioned Motion on March 29, 1985 and referred to the Court's Rules of Practice and Procedure, 72(b) therein. The Respondent failed to follow the procedure outlined in 72(b). The Procedure reads as follows: "The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity." The Respondent did not list the individual items and/or categories nor did Respondent describe each item and category with reasonable particularity. This is clearly another procedural error violation against Petitioners. Petitioners allege that

Respondent is attempting such over-zealous requests without regard to procedure, because Petitioners in effect are representing themselves.

3. Respondent's Motion to Permit Entry . . . will be the fourth inspection of premises (if granted by Court) for the same tax period. (Please refer to letter from Petitioners to Mr. William McNamara, District Counsel March 25, 1985, and attached to Respondent's Motion labeled Exhibit E). For each of the three on-premise-tours, Petitioners scheduled the entire day. (all business appointments were cancelled in order to demonstrate full cooperation). Petitioners were prepared to demonstrate each area used for business, demonstrate related audio/visual materials relevant to livelihood, etc.) In each and every case, Internal Revenue Service Personnel terminated the tours early. The first two tours lasted only one hour and one and

one half hours respectively. The Officials stated that they did not want to see room demonstrations because of lack of time from their busy schedules. Also, no questions were asked about Petitioners' complicated, varied, and unique operation. During the Third Entry and Inspection, Petitioner, Charles Hefti, offered to allow Internal Revenue Officials to open at will any cabinets, drawers, doors, etc. for inspection. District Counsel, James Kutten did just that! Mr. Kutten even opened and inspected Petitioners' Daughter's personal closet. It is clear that Petitioners have bent over backwards to cooperate fully with Internal Revenue Service.

4. More irrational and unfair behavior had been demonstrated by Respondent when the letter dated February 22, 1985, was sent to attorney of record, Sanford Neuman, requesting an informal consultation prior to using Discovery as

set forth in Rule 70(a)(1) of the Tax Court's Rules of Practice and Procedure. (Letter was attached to Respondent's Motion to Compet (sic) Entry . . . and is labeled as Exhibit A). With the Court respectfully requested to keep in mind that District Counsel's Office was made aware of Counsel's decision to withdraw before Petitioners were made aware of same (please refer to Motion of Counsel to Withdraw Paragraph No. 3,; Counsel states that Counsel for Respondent has indicated that he has no objection to this Motion. Petitioners were made aware of the Motion to Withdraw on February 23, 1985, by Certified Mail.) The letter was sent by District Counsel, William J. McNamara knowing that Counsel motioned to withdraw from the case. Also, the letter was sent on Friday February 22, 1985, and received by Counsel, Neuman at approximately 1:00 p.m. on Monday February 25, 1985-<u>only one hour before the 2:00 p.m.</u> appointment was

scheduled! Counsel, Neuman, of course, was not able to attend this conference with only one hour prior notice. Counsel's letter of response to District Counsel's letter is attached. No further conferences were scheduled which <u>confirms callous disregard for Petitioners' Due Process.</u> Petitioners were not aware of said conference until Counsel sent a copy at a later date. (please refer to allegations set forth in Paragraphs 4 and 7 of Respondent's Motion For Order Compelling the Petitioners to Permit Entry . . .)

5. <u>Allegations made in Paragraph N. 13</u> of Respondent's Motion for Order Compelling The Petitioners to Permit Entry . . ., <u>are simply not true</u>. During the two formal on-premise-inspections given at the examination level, no mention to request photographs, and/or measure was made by Revenue Agents and/or Supervisors. As a matter of fact, the tours were rushed

through by uninterested hurried Internal Revenue Service Personnel. Petitioners had allowed two full days for the two tours, but Internal Revenue Service Personnel opted to terminate the tours quickly asking few if any pertinent questions throughout the tours. Petitioner, Charles Hefti, continually asked if the officials had questions and/or offered demonstrations of each room and how the room was used to carry out Petitioners' livelihood. Officials always said nothing further was needed - as if to say they understood everything about the complicated operations. Prior to the on-premise-tour offered to Appellate Officer, Thomas Wettig and District Counsel, James Kutten, <u>no request to Measure anything was asked of Petitioners and/or Petitioners' Counsel</u>! A request to photograph was made by District Counsel, Kutten to Counsel, Neuman. Counsel Neuman related the request to

Petitioners. Petitioners wanted to know just what photographs were requested by District Counsel. Counsel Neuman stated District Counsel, Kutten indicated no particularity. Petitioners told Counsel Neuman that Petitioners would rather not have the entire home-office photographed because of <u>security reasons and lack of particularity.</u>

Petitioners explained that the home-office, because it is filled with highly sought after "High-tech expensive equipment," is highly susceptible to break-ins. Petitioners were especially frightened about complete photographs of equipment getting into the "wrong hands." Revenue Agent, Kevin McGrath visited Robert L. Weber, Security Chief for Southwestern Bell Telephone Company to share confidential Return Information. (Please refer to Petitioners' letter to District Counsel, McNamara dated March 25, 1985 and attached to Respondent's

Motion For Order Compelling the Petitioners To Permit Entry . . . as Exhibit E). Combined with the fact that Agent, McGrath not only disclosed Confidential Return Information to a private corporation, but lacked credibility when Petitioners learned about the Warrant for Mr. McGrath's arrest in the City of St. Louis, the Court can hopefully understand Petitioners' hesitations to disclose more confidential information to these Officials. Petitioners were not aware at that time about Tax Court Procedure (Rule 72(b) to protect tax payers from these unreasonable over-zealous requests. Petitioners assumed that such a protection surely should exist, but Counsel, . . .

Statement of account with (deleted)

Mr. (illegible)
(illigible)
St. Louis, MO (illegible)

(illegible)

Statement Summary

statement balance on 9/30/80	(illegible)
(illegible)	(illegible)
(illegible)	(illegible)

(illegible)

Resulting in a current balance on 12/31/80 of	(illegible)
Interest paid year to date	159.89
Number of days in this interest period	(illegible)

TRANSACTIONS THIS PERIOD

DATE	AMOUNT	TRANSACTION DESCRIPTION
(illegible)		
	700.00	Withdrawal
	1,102.50	Withdrawal
	(illegible)	Interest Payment
	(illegible)	Deposit
	(illegible)	Interest Payment
	900.00	Withdrawal
	(illegible)	Withdrawal
	(illegible)	Withdrawal
	10,000.00	
12/31	2,855.01	
12/31	14,305.85	
12/31	39.36	Interest Payment

Excerpted from Stipulation of Facts
Prepared by IRS

26.(c). Attached hereto and made a part hereof as Exhibit 25 is a true and correct photocopy of the petitioners' ledger of their 1980 expenditures for their claimed business trips. Attached hereto and made a part hereof as Exhibit 26 is a true and correct photocopy of the petitioners' ledger for their 1980 claimed entertainment expenditures.